

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No.: 11-CV-5766 (GBD)

TEEN MODEL (a minor), by her parents,
PARENTS,

Plaintiffs,

**ANSWER TO CROSS CLAIM BY
EST. 1844, LLC DBA BLOOD IS
THE NEW BLACK**

-Against-

JASON LEE PARRY,
BLOOD IS THE NEW BLACK,
URBAN OUTFITTERS, INC., and
BRANDY & MELVILLE N.Y. INC.,

Defendants.

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Defendant EST. 1844, LLC DBA BLOOD IS THE NEW BLACK (referred to as "BITNB"), hereby responds to the Cross Claim of Defendant and Cross Claimant URBAN OUTFITTERS, INC., as follows:

FIRST CROSS CLAIM

BITNB denies URBAN OUTFITTERS, INC. is entitled to the relief sought. BITNB denies that the Plaintiffs have been injured and damaged by any act Plaintiffs attribute to BITNB. BITNB admits that it purchased from JASON LEE PARRY a license to use certain images in commerce. The license was based on certain warranties and representations made by JASON LEE PARRY and on which BITNB reasonably relied. BITNB passed on to URBAN OUTFITTERS, INC. the warranties and representations obtained from JASON LEE PARRY. The remaining portions of the Paragraphs constituting the First Cross Claim state legal

conclusions to which no responses are required. However, to the extent BITNB is required to respond, BITNB provides that it lacks information or knowledge sufficient to admit or deny the allegations and therefore denies such remaining allegations.

SECOND CROSS CLAIM

BITNB denies URBAN OUTFITTERS, INC. is entitled to the relief sought. BITNB denies that the Plaintiffs have been damaged by any act Plaintiffs attribute to BITNB. BITNB admits that it purchased from JASON LEE PARRY a license to use certain images in commerce. The license was based on certain warranties and representations made by JASON LEE PARRY and on which BITNB reasonably relied. BITNB passed on to URBAN OUTFITTERS, INC. the warranties and representations obtained from JASON LEE PARRY. The remaining portions of the Paragraphs constituting the Second Cross Claim state legal conclusions to which no responses are required. However, to the extent BITNB is required to respond, BITNB provides that it lacks information or knowledge sufficient to admit or deny the allegations and therefore denies such remaining allegations.

THIRD CROSS CLAIM

BITNB admits that it agreed to indemnify URBAN OUTFITTERS, INC. pursuant to certain terms and conditions. BITNB denies URBAN OUTFITTERS, INC. is entitled to the relief sought based on the denial by URBAN OUTFITTERS, INC. of the defense offered. The remaining portions of the Paragraphs constituting the Third Cross Claim state legal conclusions to which no responses are required. However, to the extent BITNB is required to respond, BITNB provides that it lacks information or knowledge sufficient to admit or deny the allegations and therefore denies such remaining allegations.

FOURTH CROSS CLAIM

BITNB admits that it agreed to secure liability insurance and further admits that its liability insurer extended to URBAN OUTFITTERS, INC. defense and indemnity, which URBAN OUTFITTERS, INC. expressly declined. As a result, BITNB denies URBAN OUTFITTERS, INC. is entitled to the relief sought. BITNB denies that it breached any agreement with URBAN OUTFITTERS, INC. The remaining portions of the Paragraphs constituting the Fourth Cross Claim state legal conclusions to which no responses are required. However, to the extent BITNB is required to respond, BITNB provides that it lacks information or knowledge sufficient to admit or deny the allegations and therefore denies such remaining allegations.

FIRST AFFIRMATIVE DEFENSE

(Failure of Federal Question Jurisdiction)

1. To the extent Plaintiffs can prove they have suffered damages as a result of actions undertaken by Defendant, which is expressly denied, Plaintiffs are not able to establish the existence of a cause of action under 28 U.S.C. § 1338. To the extent URBAN OUTFITTERS, INC. relies on the jurisdiction alleged by Plaintiffs, no federal jurisdiction exists.

SECOND AFFIRMATIVE DEFENSE

(Failure of Diversity Jurisdiction)

2. To the extent Plaintiffs can prove they have suffered damages as a result of actions undertaken by Defendant, which is expressly denied, Plaintiffs' damages are insufficient to meet the statutory minimum requirement. To the extent URBAN OUTFITTERS, INC. relies on the jurisdiction alleged by Plaintiffs, no diversity jurisdiction exists.

THIRD AFFIRMATIVE DEFENSE
(Failure to State a Cause of Action)

3. As a defense to each claim for relief stated in the Cross Claim, the Cross Claim fails to state a valid and cognizable claim for relief under applicable law, as required by Rule 12(b)(6) of the Federal Rules of Civil Procedure. BITNB pleads Rule 12(b)(6) of the Federal Rules of Civil Procedure as a bar to URBAN OUTFITTERS, INC.'s claims.

FOURTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

4. As a defense to each claim for relief stated in the Cross Claim, URBAN OUTFITTERS, INC.'s claims are barred by the applicable statutes of limitations including, without limitation, 17 U.S.C. § 507(b), 35 U.S.C. § 286, and 35 U.S.C. § 287.

FIFTH AFFIRMATIVE DEFENSE
(Consent)

5. As a defense to each claim for relief stated in the Cross Claim, URBAN OUTFITTERS, INC.'s claims are barred on the basis of consent.

SIXTH AFFIRMATIVE DEFENSE
(Waiver)

6. As a defense to each claim for relief stated in the Cross Claim, URBAN OUTFITTERS, INC.'s has waived its claims.

SEVENTH AFFIRMATIVE DEFENSE
(Equitable Doctrines)

7. As a defense to each claim for relief stated in the Cross Claim, URBAN OUTFITTERS, INC.'s claims are barred by the Equitable Doctrines of laches and/or unclean hands.

EIGHTH AFFIRMATIVE DEFENSE
(Estoppel)

8. As a defense to each claim for relief stated in the Cross Claim, URBAN OUTFITTERS, INC. is estopped from recovering on its claims.

NINTH AFFIRMATIVE DEFENSE
(Contribution)

9. BITNB alleges that it is informed and believes, and, based on such information and belief, alleges that Plaintiffs and/or third parties not yet a party to this action, were careless and negligent, and that this carelessness and negligence proximately contributed to the events and losses alleged, if any.

TENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

10. BITNB alleges that URBAN OUTFITTERS, INC., with full knowledge of the alleged damages, if actually suffered, which is expressly denied, failed to mitigate such damages.

ELEVENTH AFFIRMATIVE DEFENSE
(Comparative Fault)

11. BITNB alleges that the alleged events and damages, if any, were proximately caused by the negligence and/or other fault or acts of Plaintiffs and/or

parties or entities other than BITNB, and, as such, said negligence and/or other fault comparatively reduces the percentage of any liability attributable to BITNB, if it should be found that it was negligent or otherwise at fault, which it expressly denies.

TWELFTH AFFIRMATIVE DEFENSE

(Independent, Intervening or Superseding Causes)

12. BITNB alleges that independent, intervening, and superseding forces and/or actions of Plaintiffs and/or third parties proximately caused or contributed to Plaintiffs' alleged losses or damages, barring recovery from BITNB.

THIRTEENTH AFFIRMATIVE DEFENSE

(Indemnification)

13. BITNB alleges that, if it is held liable for the events and losses set forth in the Cross Claim, said liability will be based solely on a derivative form of liability, not resulting from the alleged negligent conduct of BITNB, but rather from an obligation imposed by law. As such, BITNB will be entitled to complete and total implied indemnity from other defendants and/or third parties to this action.

FOURTEENTH AFFIRMATIVE DEFENSE

(Implied License)

14. As a defense to the Cross Claim in its entirety, BITNB alleges that the Plaintiffs and/or an agent of Plaintiffs, granted an unqualified license to use the photographs at issue.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Unlawful Conduct)

15. The conduct alleged in the Cross Claim is not, and was not, unlawful.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Standing)

16. BITNB alleges that URBAN OUTFITTERS, INC. cannot substantiate the allegations in the Cross Claim because of a lack of standing.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Insufficient Facts for Damages)

17. BITNB alleges that neither the Amended Complaint nor the Cross Claim states facts sufficient to entitle URBAN OUTFITTERS, INC. to an award of damages against BITNB.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

18. BITNB reserves the right to allege further affirmative defenses, as they may become known through the course of discovery.

WHEREFORE, Defendant EST. 1844, LLC DBA BLOOD IS THE NEW BLACK requests that:

1. URBAN OUTFITTERS, INC.'s Cross Claim be dismissed and URBAN OUTFITTERS, INC. recover no relief from BITNB;
2. BITNB be awarded attorneys' fees and costs incurred defending this action; and
3. BITNB be awarded any other relief that the Court deems just and proper.

Dated: April 11, 2012

Respectfully Submitted,

s/ Kanika D. Corley

James J.S. Holmes (admitted *pro hac vice*)

Kanika D. Corley (admitted *pro hac vice*)

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